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From: Turley, Jennifer

Sent: Tue 2/11/2014 3:13:25 PM

Subject: Water Law News for February 11, 2014



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for February 11, 2014

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Drilling

Industry Seen Gaining From Presence Of Oil-State Senators Atop Energy Committee

They are senior senators from two of the nation's top oil-producing states, longtime friends who are about to begin a partnership that has environmentalists uneasy and industry lobbyists counting on a shift in energy policy....

Drinking Water

GAO Report Says EPA Should Monitor For More Than 30 Unregulated Contaminants

Congress should amend the Safe Drinking Water Act to allow the Environmental Protection Agency to monitor for more than 30 contaminants under certain circumstances, the Government Accountability Office said in a report released Feb. 10....

Drinking Water

Regulatory Gap Cited in Chemical Spill Tainting Charleston, W.Va., Water Supply

The West Virginia storage facility that leaked a chemical that contaminated the water supply of 300,000 Charleston-area customers shouldn't have been built upstream from a treatment plant, a federal investigator said....

Drinking Water

Suit Claims 'Collective Dereliction' of Duty By West Virginia Agencies in Elk River Spill

West Virginia agencies charged with safeguarding public health committed "collective dereliction" of duty by failing to prevent the Elk River chemical spill, according to a lawsuit filed on behalf of affected citizens (Covenant...

Mining

Industry, States Ask Appeals Court to Affirm Ruling Against EPA Conductivity Guidance

The National Mining Association and the states of West Virginia and Kentucky urged a federal appeals court Feb. 10 to uphold a lower court's rejection of the Environmental Protection Agency's water conductivity guidance related...

Mining

Judge Transfers Parts of Case to Three Other Venues

A federal judge in Colorado has transferred to federal courts in Montana, New Mexico and Wyoming certain claims in a lawsuit filed by WildEarth Guardians against the Office of Surface Mining, Reclamation and Enforcement 9 (WildEarth Guardians...

Water Pollution

Duke Energy Stops Coal Ash Leak, Plans Long-Term Cleanup of River

The release of coal ash from a storage lagoon at Duke Energy's Dan River Steam Station near Eden, N.C., into the Dan River has been stopped, according to a spokeswoman for the utility....

Water Pollution

EPA Invites Wastewater Industry to Partner On Methods to Modernize Permitting Process

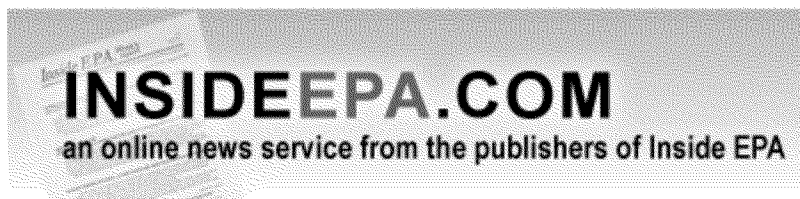
The Environmental Protection Agency seeks to collaborate with the wastewater industry sector in seeking approaches to make the existing permitting process under the Clean Water Act National Pollutant Discharge Elimination System program...

Water Pollution

Rep. Capito Announces Bill to Require States

To Inspect Aboveground Chemical Tanks

Responding to a chemical spill upstream of a drinking water treatment plant in the Elk River in West Virginia, Rep. Shelley Moore Capito (R-W.Va.) announced Feb. 10 that she would introduce legislation to require states to establish inspection...



inepa.com

inside EPA's **Risk Policy Report**, 02/11/2014

<http://insideepa.com/Risk-Policy-Report/Risk-Policy-Report-02/11/2014/menu-id-130.html>

Close To Cooling Rule Deadline Deal, Environmentalists Threaten Court Action

Environmentalists say they are close to reaching a deal with EPA on a deadline to complete its long-delayed cooling water intake rule but are vowing to ask the court overlooking the rule's development to set an enforceable deadline that could result in federal officials being charged with contempt if they miss it.

Greenwire
Greenwire

WATER POLLUTION:

Officials hesitant to offer 'safe' declaration at W.Va. field hearing

Jason Plautz, E&E reporter

Published: Monday, February 10, 2014

CHARLESTON, W.Va. -- Rep. Shelley Moore Capito (R-W.Va.) today announced plans to introduce legislation that would tighten oversight and inspection of chemical storage and aboveground storage facilities in the aftermath of a chemical spill that left 300,000 people in her home state without tap water for days.

"Families need to know that the water that comes out of their tap is clean and safe," Capito said. "The chemical spill in Charleston highlighted a number of gaps in existing regulations that must be closed."

The bill, which mirrors Senate legislation, would require states to create programs to oversee storage facilities and would set minimum requirements for oversight and inspection programs. That would include design standards, leak detection, overfill control, communication and notice of potential toxics.

The announcement came this morning at a field hearing of the House Transportation and Infrastructure Committee in Charleston to discuss the Jan. 9 spill of the coal-scrubbing chemical MCHM from a Freedom Industries Inc. tank that polluted the water supply for parts of nine counties in the state.

While the hearing touched on the immediate response and the cost of the spill, the overarching question was one that most witnesses hedged on answering: Is the water safe?

Even a month after the spill and weeks after the utility West Virginia American Water said levels had dropped below 1 part per million, the level designated safe by the Centers for Disease Control and Prevention, residents say they're still shaken and are largely relying on bottled water.

In an unusual move, T&I Chairman Bill Shuster (R-Pa.) today allowed audience members to make two-minute statements, which allowed residents to express their concerns about the water supply.

"I've got a spot on my leg from the water. I won't shower or bathe in it right now," resident James Gilbert said. "Why can't any one of you tell us that this is OK?"

Committee members also asked witnesses to make a simple declaration that water is safe, but all hedged.

West Virginia American Water President Jeff McIntyre said the water was "in compliance" with standards by health agencies but said he recognized customers' "fear of the smell." State health officer Letitia Tierney said the water was "usable for every purpose" but added that the word "safe" was "a difficult thing to say because everyone has a different definition of safe."

U.S. Chemical Safety Board Chairman Rafael Moure-Eraso, whose agency is investigating the spill, said a lack of toxicological data about MCHM led to the hesitation, a fact that critics have said exposes the need for reform of the Toxic Substances Control Act.

"In order to give a scientific answer, you have to have scientific data," Moure-Eraso said.

"Nobody is willing to say the water is safe. Everyone's going to dance around the question," Shuster said. "I expect the main reason why is that everyone is scared they're going to get sued."

More regulations needed, witnesses say

The spill has also highlighted the lax regulations governing chemical storage and chemical screening, both on the federal and state level. Witnesses and legislators were quick to call for more study and inspection of the facilities.

Moure-Eraso said the spill showed that residents would never take safe drinking water for granted again and said his investigative team will be issuing recommendations on how to ensure that plants are inspected and have proper backup systems. The Freedom Industries plant that leaked the chemical, he said, had a secondary wall that provided "very little protection," and investigators have found corrosion on the tank.

Mike Dorsey, state homeland security director, said the lack of information about MCHM should also serve as a warning to reform TSCA. That bill, he said, was designed as a "safety net, and it never fulfilled that responsibility."

Capito's bill represents the first House move to tighten chemical safety regulations. It's unclear, however, whether it will have much momentum.

A version from Sen. Joe Manchin (D-W.Va.) and others appears on the fast track in the Senate Environment and Public Works Committee, but House members have been less enthusiastic about passing new regulations. T&I ranking member Nick Rahall (D-W.Va.)

even said this morning that he would not endorse legislation until he had heard all the facts after the hearing.

Manchin said he has spoken to House Speaker John Boehner (R-Ohio) about moving a companion bill.

Attending the hearing were Shuster, Rahall, Capito and Rep. Daniel Webster (R-Fla.), whose family is from the Charleston area. Manchin also joined the panel.

Freedom Industries President Gary Southern was invited to testify but did not appear, a fact that frustrated legislators.

"There is an odor emanating from Freedom Industries, and it is not licorice," said Rahall, a reference to the licorice smell of MCHM.

Capito said officials from the CDC were also invited to testify but declined. The CDC, she said, is continuing to work with federal and state officials.

Manchin said the spill -- whose effects have continued to linger, with some school closings in recent weeks and spikes in hospitalization -- ought to merit more federal response, which witnesses said would be welcome.

"This is a wake-up call to prevent a national disaster, and we should expect some help from the federal government," Manchin said, comparing it to a response similar to that of Superstorm Sandy. "Shouldn't we be looking at how much this costs and when we need to do more testing, how much that costs? It just needs to be done."

DROUGHT:

Calif.'s lack of rain threatens coho salmon

Published: Monday, February 10, 2014

California's ongoing drought has prevented coho salmon from following their regular migratory routes.

Typically during this time of year, heavy rains break a sand barrier that separates Scott

Creek and other streams like it from the ocean. The fish scuttle out toward the ocean, where they spawn and die.

But there has yet to be enough rainfall for the fish, despite recent showers. In many cases, they continue to meander around the streams.

"This is the first animal that will feel the impacts of the drought," Jonathan Ambrose, a National Marine Fisheries Service biologist, said last week. "It's going to take a lot of rain to bust this thing open. And if they can't get in by the end of February or March, they're gone."

State wildlife officials have banned fishing in some areas to reduce the stress on the fish population.

In the 1960s, the Central Coast population of coho was about 56,000, but numbers fell to fewer than 500 returning adults in 2009. NMFS has estimated the population has reached a few thousand over the past few years.

The fish were designated as a threatened species in 1996. That classification was heightened to endangered in 2005. In 2012, NMFS researchers released a plan that estimated it could take 50 to 100 years and cost about \$1.5 billion before the fish recovers (Tony Barboza, [*Los Angeles Times*](#), Feb. 9). -- **WW**

OCEANS:

Bottle released in 1956 by Woods Hole scientist washes up in Canada

Published: Monday, February 10, 2014

A biologist has recovered a bottle that was released nearly 60 years ago by a researcher at Woods Hole Oceanographic Institution in Massachusetts.

The bottle was one of thousands that researchers released into the Atlantic Ocean between 1956 and 1972 as a means of studying surface and bottom currents. Since 1956, people have found about 10 percent of the 300,000 bottles.

Steven Jayne, a senior scientist at Woods Hole, said that at the time, the experiment by

the late scientist Dean Bumpus might have been the best way to study the currents.

"We didn't have satellites to track currents like we do now. So the only thing you could do was to see where something started and where it ended up," he said. "That was a pretty good approach."

Warren Joyce, who had been studying gray seals on Sable Island off Nova Scotia, found the bottle among beach debris.

"It was almost like finding treasure in a way," Joyce said.

Joyce will receive what Bumpus promised in 1956 to anyone who returned a bottle: a 50-cent piece (Denise Lavoie, [Associated Press](#), Feb. 7). -- **WW**

NEW JERSEY:

State high court to weigh in on statute of limitations for cleanup liability

Published: Monday, February 10, 2014

New Jersey's Supreme Court has agreed to hear an appeal that could allow it to decide whether the state's environmental cleanup laws are subject to a six-year statute of limitations.

The case originated with a company, A&S Russo Real Estate Co., that tried to sell a property it owned in Union Township, N.J., in 2012 but learned that a consultant it once hired to clean up an underground heating oil spill hadn't actually performed the work.

The company sued the consultant to force it to pay the costs of the cleanup, but a Superior Court judge dismissed the suit on the grounds that A&S had waited too long to sue under the state's Spill Act. Appellate courts in New Jersey have reached contradictory rulings on the issue over the years, opening the door for Supreme Court review.

"The question is, who's really responsible at the end of the day? Who should bear those costs?" said attorney Gregory Pasquale, who represents A&S. "Hopefully, the Supreme Court will make a decision that will identify how best to allocate those costs" (MaryAnn

Spoto, Newark Star-Ledger, Feb. 9). -- **SP**

OIL AND GAS:

Companies double-dipped in storage tank cleanup payments -- lawsuits

Published: Monday, February 10, 2014

Oil companies for years have illegally profited from cleaning up old underground storage tanks, according to several states that are seeking to recover millions of dollars in past cleanup payments.

Exxon Mobil Corp., Chevron Corp. and other companies received both state funds and insurance claims in exchange for removing leaky oil tanks installed under gas stations as far back as the 1940s, according to lawsuits filed by New Mexico and several other states.

"It appears this was a really common practice and it's very disconcerting," said Colorado Attorney General John Suthers (R). "Basically the companies were defrauding the state."

The lawsuits were prepared by a team of engineers and attorneys -- led by Thomas Schruben, a former U.S. EPA engineer, and Dennis Pantazis, an environmental activist -- who are handling 20 cases around the country.

States and oil companies have reached multimillion-dollar settlements in some of the cases. Colorado, for example, has signed deals with three companies for \$35 million, court records show.

But there are lawsuits pending in at least seven states, and some companies -- such as Phillips 66 and BP PLC -- have signaled that they plan to fight the accusations in court.

More than 500,000 leaky underground oil tanks have been reported across the country since 1988. Close to 80,000 spills have not been cleaned up (Mica Rosenberg, Reuters, Feb. 10). -- **DB**

MINING:

Minn. project hinges on future pollution costs

Published: Monday, February 10, 2014

The fate of a proposed copper mine in Minnesota could come down to the project's future water pollution costs.

State regulators are debating how much PolyMet Mining Corp. should be asked to pay to cover future cleanup costs at the company's proposed NorthMet mine in northeastern Minnesota.

"Our concern is not so much whether PolyMet is profitable or not," said Jess Richards, director of lands and minerals for the Minnesota Department of Natural Resources. "Our focus is to make sure that the state is protected if PolyMet were to walk away."

Environmental groups say water treatment near the mine would cost \$400 million once the 20-year project shuts down. Opponents say the state should not be left to foot the bill.

"It's a critical question for the viability of the project," said Kathryn Hoffman, an attorney for the nonprofit Minnesota Center for Environmental Advocacy. The decision should be based on "what will protect the taxpayer and the environment," she added.

Several states require companies to pay upfront pollution costs before they start operations. U.S. EPA is considering a national rule after facing billions of dollars in cleanup costs at abandoned mines.

PolyMet spokesman Bruce Richardson said the company's proposal includes financial assurance to cover potential pollution. "We are fully aware of our obligations there," Richardson said.

A public comment period on the project is open until mid-March (Josephine Marcotty, [Minneapolis Star Tribune](#), Feb. 9). -- **DB**

WATER POLLUTION:

Ethanol spills in N.C., enters sewage treatment plant

Published: Monday, February 10, 2014

Authorities in the Charlotte, N.C., area are investigating illegally dumped ethanol that has flowed into a nearby sewage treatment plant.

Workers noticed an unusual odor in wastewater entering the plant at 8:45 p.m. Saturday, and an investigation determined that ethanol had entered the facility -- although initial test results suggested polychlorinated biphenyls, or PCBs, were in the water. Sewage treatment officials have shut down the Sugar Creek Wastewater Treatment Plant as they work to determine how to adjust plant operations to manage the ethanol.

Authorities found evidence of illegal PCB dumping last week in a different area of Charlotte, but they don't believe the two incidents are related. If suspects are apprehended, they could face multiple felony charges for violating a state law against dumping toxic substances as well as felony Clean Water Act violations, according to a city spokeswoman.

"It appears to be coincidental, strangely coincidental," said Charlotte City Manager Ron Carlee, adding that the city would likely end up being responsible for the disposal costs (Arriero/Bethea/Lyttle, *Charlotte Observer*, Feb. 9). -- **SP**

WATER POLLUTION:

Colo. struggles with decades of chemical contamination

Published: Monday, February 10, 2014

Officials across Colorado are struggling to contain at least 86 underground plumes of the cancer-causing chemical perchloroethylene, or PCE, that have been spreading beneath homes, offices and public spaces for decades.

Decades ago, people were allowed to flush PCE down the toilet or dump it on the ground behind their stores. The chemical can seep through concrete, spreading for miles underground, and can stay volatile decades after a spill -- characteristics that make it an excellent and popular solvent for dry cleaners but a nightmare for the Colorado Department of Public Health and Environment.

Now, the chemical is tainting soil, water and the air across the state, and officials doubt they've discovered every plume. They are even more skeptical of their ability to contain and remove the contaminant. It can cost hundreds of thousands of dollars to clean a site.

The legal permissible level of PCE in Colorado groundwater is 17 parts per billion, a level the state set in 2010, increasing it from the previous level of 5 ppb, which matched U.S. EPA's standard for drinking water. EPA redefined the chemical as a probable carcinogen in 2012 and has found it also attacks the nervous system.

Still, officials don't know all the sites in Colorado with PCE levels exceeding 17 ppb. The 86 plumes known today, at sites including water wells in Colorado Springs, a day care in Aurora and a Safeway grocery store in Denver, are managed by six CDPHE staffers.

The state has created a public registry to list sites where cleanup ends before health standards are reached.

The head of CDPHE's compliance unit, Walter Avramenko, said it is becoming more widely understood that "our ability to clean up the complex sites is limited" (Bruce Finley, Denver Post, Feb. 9). -- HG

TURKEY:

Pollution, overfishing lead to crisis in nation's waters

Published: Monday, February 10, 2014

Turkey is facing a fishing crisis as lax regulation and growing demand and competition put extreme pressure on historically rich waterways.

A booming population in the country and a corresponding growth in fishermen -- along with more technologically advanced boats, weak enforcement of fishing laws and pollution -- are to blame for the decline, experts say. There were more than two dozen commercial species in Turkey's fishing areas 50 years ago, but now there are only five or six, according to Aylin Ulman, a University of British Columbia scientist.

The Turkish government has prohibited fishing in the summer months to allow populations to rebuild, but there is no quota system and illegal fishing is common, as punishments are rare. And to avoid additional fees and levies, legal fishermen often underreport their catch.

Habitat loss from shipping and climate change is also a threat, according to Bayram Ozturk, president of the Turkish Marine Research Foundation (Ali Morrow, [Reuters](#), Feb. 10). -- **HG**

BRAZIL:

Red tape holds up water infrastructure project for years

Published: Monday, February 10, 2014

Bureaucratic red tape and rising construction costs have stalled a massive water infrastructure project in Brazil.

In 2006, then-President Luiz Inácio Lula da Silva announced plans to divert water from the São Francisco River to four states in a drought-stricken part of northeastern Brazil.

The system of canals and reservoirs was supposed to be finished by 2010, but four years after the original deadline, the project remains unfinished even though its projected cost has doubled to \$3.4 billion.

Now critics say it won't be completed before the end of a potential second term for

Lula's successor, President Dilma Rousseff, who is up for re-election this fall.

"Lula said the São Francisco project would be the eighth wonder of the world," said Adriano Pires, a Rio de Janeiro-based infrastructure consultant. "But it's a fiasco."

Government officials have long argued that the delay is normal for such a large project.

"[Several] years is an acceptable time frame for a project this big," said José Teixeira, Brazil's minister of national integration and the official in charge of the project (Anthony Boadle, [Reuters](#), Feb. 10). -- **DB**

NEW ZEALAND:

Officials to meet with Japan ambassador over whaling

Published: Monday, February 10, 2014

New Zealand has met with Japan's ambassador after a whaling ship entered its exclusive economic zone.

After New Zealand officials warned Japan to keep its whalers away from its maritime zone, one vessel breached the zone as it followed a protest vessel.

"The New Zealand Embassy in Tokyo last week made it very clear we did not want members of the Japanese whaling fleet entering our EEZ," New Zealand Foreign Affairs Minister Murray McCully said in a statement. "Today's meeting with the Ambassador served to further reiterate how deeply disrespectful the vessel's entry into our EEZ was."

A spokesman for the Japanese government defended the ship's actions.

"We believe there was no problem with the movements of our ships from the point of view of international law," said Yoshihide Suga, Japan's chief Cabinet secretary. "This ship was taking protective moves and intruded on the EEZ as one part of that."

Although there is a global ban on whale hunting, Japanese vessels can take a limited number of whales under a scientific research exception (Beckford/Lies, [Reuters](#), Feb. 10). -- **WW**

NATURAL GAS:

Center for Sustainable Shale Development's Place discusses group's audits on fracking operations

Published: Monday, February 10, 2014

Could voluntary environmental audits on hydraulic fracturing operations bridge the gap between industry and environmentalists on performance standards? During today's OnPoint, Andrew Place, director of the Center for Sustainable Shale Development, discusses his group's plans for audits of shale developers and the impact these audits could have on the regulatory discussion.

[Click here](#) to watch today's OnPoint.

ClimateWire -- Tue., February 11, 2014 -- [Read the full edition](#)

1. POLICY: Obama admin quietly preparing pledge of deeper GHG emissions targets for U.N. talks

The Obama administration is quietly working on new greenhouse gas emissions targets to deliver to the United Nations, even as it struggles to craft regulations that will enable the United States to meet its current carbon-cutting goals.

2. CALIFORNIA: State urges further emissions cuts to preserve 'California lifestyle'

California officials yesterday proposed expanding their suite of climate policies to reduce emissions from energy, transportation and other sectors through 2030 and beyond.

TODAY'S STORIES

3. TECHNOLOGY: Lifesaving rescue mission directed from 23,000 miles above the Earth

4. RENEWABLE ENERGY: U.S. solar industry added 23,000 jobs last year, many beyond the Sun Belt

5. CITIES: Metro regions can reverse warming with cool and green roofs -- study

6. EMPLOYMENT: Good jobs and a clean economy aren't at odds, labor advocates argue

7. OFFSHORE WIND: R.I. developer announces agreements with French turbine maker for first East Coast project

8. RENEWABLE ENERGY: Wyo. wind farm could undercut delivery prices in Calif.

9. FORESTS: Droughts in Amazon rainforest lead to carbon dioxide release -- study

10. FLOODS: River Thames bursts its banks near London, flooding towns

11. SPECIES: Snow leopards in Kazakhstan may be in danger due to hotter weather

E&ETV's OnPoint

12. RENEWABLES: Solar Foundation's Luecke discusses impact of net-metering debate on job growth

1. KEYSTONE XL: Greens fume at State's bet on oil sands as the new Bakken

The State Department softened some of its sunniest growth predictions for Canadian oil sands by rail in its final environmental review of Keystone XL -- but greens still warn that only analysts in rose-colored glasses could see trains as a viable substitute for the pipeline.

2. NATIONS: Facing hard-to-get oil, Russia seeks U.S. help

The record-breaking budget behind the flashy 2014 Winter Olympics in Sochi sends a clear message to the world: In Russia, go big or go home. The same motto could apply to the country's oil and gas sector, which is dominated by a few companies including OAO Gazprom, OAO Lukoil and OAO Rosneft. But as these oil giants eye complex unconventional crude reserves and deepwater Arctic oil fields, they may need help from U.S. explorers who have traditionally shied away from Russia's notoriously insular energy sector.

OIL, GAS AND COAL

3. REFINING: As civil trial opens, Exxon Mobil continues to question suit's validity

4. GAS EXPORTS: Texas LNG project takes 25th spot in DOE queue

5. PEOPLE: Energy consultant joins Apache board

6. OIL AND GAS: EIA map now shows individual well sites in U.S.

7. NATURAL GAS: State, federal officials scramble to supply propane amid chill

8. EARTHQUAKES: Texas temblor findings may take years, geologists say

9. MARKETS: Customers unlikely to see U.S. fuel boom benefits

10. NATURAL GAS: LNG fuel backer steps up support as stock price falters

ELECTRIC UTILITIES

11. UTILITIES: 'Death spiral' can be avoided by embracing distributed generation -- analysis

12. POWER PLANTS: Retirements play role in rising electricity prices, disruptions -- coal group

13. UTILITIES: 2013 substation attack spurs increased security

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